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IN THE

Supreme Court of the United States

October Term, 1972
No. 71-1652

IRVING SARNOFF, KENNETH W. ROTTGER, and RAPHAEL KONIGSBERG,

Petitioners,

vs.

JOHN B. CONNALLY, Secretary of the Treasury, and DOROTHY B. ELSTON, Treasurer of the United States,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITIONERS' REPLY.

GEORGE T. ALTMAN,
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Respondents' memorandum in opposition presents, by way of their like memorandum in *Massachusetts v. Laird,* Oct. Term, 1970, (No. 42 Original, Motion for Leave to File Complaint, Motion denied, ... U.S. .....), a lengthy argument none of which has anything to do with the case here. While respondents therein falsely and absurdly label the war in Vietnam American "participation" in the hostilities there, petitioners seek no injunction against that war.

If such were their purpose, they would present as a contention the sharp conflict between *Jackson v. North American Assurance Society of Virginia, Inc.* (Va. S. Ct., 9/1/71) 183 S. E. 2d 160, 40 L. W. 2125, and

this Court's denial of the motion in *Massachusetts v. Laird, supra.* In the *Jackson* case the court held that the Gulf of Tonkin Resolution, P.L. 88-408, 78 Stat. 384, did not authorize or establish a state of war, whereas in the brief of respondents in *Massachusetts v. Laird, supra,* and in several of the circuit court cases relied on therein, such as *Orlando v. Laird* (C.A. 2, 1971) 443 F. 2d 1039, 1041, that resolution was pointed to as at least substantial Congressional support for that war.

But that conflict of cases is irrelevant. The injunction which petitioners seek is not against the war itself but solely against disbursement of funds under three specified sections of the Foreign Assistance Act of 1961. Petitioners' first contention in that respect is that the sections specified, and especially section 614(a), being 22 U.S.C. §2364(a), amount to an assignment by Congress to the President, of the power of Congress to declare war, without restraint of any kind, and without determinable definition or specification of any kind. This respondents fail to deny. Petitioners' next contention is that, under a rule in respect thereto established by this Court, as shown in the petition herein, at p. 3, Congress has no power to make such an assignment. This respondents also fail to deny.

Nor do respondents question the historic importance of the issue presented. For that reason, above all else, we urge this Court to accept this proceeding for review.

Respectfully submitted,

GEORGE T. ALTMAN,
Attorney for Petitioners.